Filed 1/29/19 P. v. Williams CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL WILLIAMS, Defendant and Appellant.	D073795 (Super. Ct. No. SCD275396)

APPEAL from a judgment of the Superior Court of San Diego County, Polly H. Shamoon, Judge. Dismissed.

Matthew R. Garcia, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Joseph C. Anagnos, Deputy Attorneys General, for Plaintiff and Respondent.

As part of a plea bargain, defendant Michael Williams pleaded guilty to one felony count of carrying a concealed dirk or dagger (Pen. Code,[1] § 21310); in exchange, the prosecutor dismissed a strike-prior allegation and stipulated to a probationary sentence that included only 180 days in custody (rather than the applicable 16-month/2-year/3-year felony sentencing triad). (See §§ 21310, 1170, subd. (h).) In his guilty plea form, Williams acknowledged the trial court could impose reasonable probation conditions, and he agreed to waive his "right to appeal . . . any sentence stipulated herein." At sentencing, the trial court imposed the agreed-upon sentence—probation, subject to 180 days in custody. The court also imposed various probation conditions, including that Williams submit his electronic devices and social media accounts to warrantless, suspicionless searches. Although Williams initially objected to this condition, he ultimately accepted probation on the court's proposed terms.

Williams now asserts that the electronics-search condition is unreasonable under California Supreme Court standards (see *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*)), and unconstitutionally overbroad under United States Supreme Court standards (see *Riley v. California* (2014) __ U.S. __ [134 S.Ct. 2473] (*Riley*)). The Attorney General contends we must dismiss the appeal because Williams waived his right to appeal his sentence and failed to obtain a probable cause certificate despite having pleaded guilty (see § 1237.5). Alternatively, the Attorney General contends the electronics-search condition is reasonable and sufficiently narrow under the circumstances.

---

1 Further statutory references are to the Penal Code unless otherwise noted.

We agree with the Attorney General that because Williams pleaded guilty and waived his right to appeal his stipulated sentence, he was required to obtain a probable cause certificate before appealing a component of that sentence. Because he failed to obtain a probable cause certificate, we dismiss the appeal. But even if we were to reach the merits of Williams's appeal, we would find them lacking.

FACTUAL AND PROCEDURAL BACKGROUND[2]

Current Offense

On the morning of January 28, 2018, a police officer saw Williams jaywalk and "interfer[e] with an oncoming car." The officer stopped Williams and informed him why he was being stopped. When the officer asked Williams "if he had any weapons on him," Williams admitted he had a knife in his pants pocket. The officer retrieved from Williams's pocket a fixed-blade knife with an approximately six-inch-long blade. The officer arrested Williams.

In a felony complaint, the prosecution charged Williams with one count of carrying a concealed dirk or dagger (§ 21310), and alleged Williams had suffered a strike prior for burglary (see §§ 667, subds. (b)-(i), 1170.12, 668).

Williams entered into a plea bargain under which he pleaded guilty to carrying a concealed dirk or dagger, in exchange for dismissal of the balance of the charges (the strike-prior allegation) and a stipulated probationary sentence that included 180 days in

---

2 We base our factual summary on the probation report and the guilty-plea form.

custody.[3] In the section of the guilty plea form titled "**CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST**," Williams initialed a box next to a paragraph that states in part: "If I am not sentenced to imprisonment, I may be granted probation . . . . As conditions of probation I may be given up to a year in jail custody, plus [a specified] fine, *and any other conditions deemed reasonable by the Court*." (Italics added.) Williams also initialed a box next to a paragraph that states: "8. (**Appeal Rights**) I give up my right to appeal the following: 1) denial of my 1538.5 motion, 2) issues related to strike priors . . . , and 3) *any sentence stipulated herein*." (Italics added.) Williams signed the form, declaring under penalty of perjury that he read and understood the form. His attorney also signed the form, confirming she had "personally read and explained to [Williams] the entire contents of th[e] plea form . . . ."

The trial court questioned Williams at the change-of-plea hearing and found his "plea has been knowingly, intelligently, and voluntarily made." The court dismissed the balance of charges, set a sentencing hearing, and "order[ed] a full probation report."

Probation Report

On the day of the sentencing hearing (March 13), the probation department filed a report detailing 28-year-old Williams's lengthy criminal history.

---

[3] Williams's guilty plea form states his plea was induced by the following terms: "balance dismissed; NOLT [an acronym for no opposition to local time]; stip 180 days."

In 2005, when Williams was about 16, he was placed on informal probation for trespassing on campus (§ 626.6, subd. (a)) and battery causing injury on a school official (§ 243.6).

In 2007, Williams pleaded guilty to first degree residential burglary (§§ 459-460) with a firearm-use enhancement (12022.5) arising from a " 'home invasion robbery' " that he and two accomplices committed while "armed with a shotgun, a pistol, and a sword." Williams was sentenced to four years in state prison, and was later released on parole. He violated the terms of his parole in 2009, 2010, and 2011.

In 2011, Williams pleaded guilty to resisting an executive officer (§ 148, subd. (a)(1)), and was sentenced to 90 days in jail.

In 2013, Williams pleaded guilty to vandalism over $400 (§ 594, subds. (a), (b)(1)) stemming from "a road rage incident." Williams admitted to police that he intentionally threw a glass and a rock at an occupied vehicle "in order to hurt the occupants," one of whom was a toddler. Williams was placed on three years' probation.

In 2014, Williams violated the terms of his probation when he committed a new offense during a skirmish with a transit security officer and a sheriff's deputy. He ultimately pleaded guilty to battery on emergency personnel. (§ 243, subd. (b).)

The probation officer interviewed Williams. Williams "reported he was 'kicked out' of school in the 11th grade for fighting." At the time of the current offense, Williams "had been transient for three to four months" and "was living with his girlfriend out of her car." He was working part-time doing yardwork for $200 per week, and was receiving food stamps. Williams admitted using one gram of marijuana daily.

The probation officer evaluated Williams using the "Correctional Offender Management Profiling for Alternative Sanctions (COMPAS)" evidence-based assessment tool. This evaluation determined Williams "present[ed] issues which make him a risk for community safety." The assessment identified the following "Need Factors for targeted intervention": "Criminal Opportunity," "Residential Instability," and "Vocational/Education[al]." The probation officer determined Williams "would benefit from some guidance and monitoring in the community via supervision by Probation and referrals to community resources."

Ultimately, after noting Williams's prior parole violations and experience with *summary* probation, the probation officer concluded that "[t]he guidance and structure provided through *formal* probation may better assist [Williams] with seeking community resources and adhering to the Court's orders." (Italics added.) Accordingly, the probation officer recommended that Williams "be granted three years on formal probation with 180 days in custody as stipulated in the plea agreement. The standard conditions of probation will be recommended as well as drug and alcohol conditions." One of the proposed conditions states: "**THE DEFENDANT SHALL**: [¶] . . . [¶] Submit person, vehicle, residence, property, personal effects, computers, and recordable media, *portable devices, social media,* [and] *cell phone* to search at any time with or without a warrant, and with or without reasonable cause, when required by [Probation

Officer] or law enforcement officer." (Italics added;[4] hereafter, the electronics-search condition.)

Sentencing

On the day of the sentencing hearing, Williams filed written objections to the electronics-search condition. His counsel argued it was unreasonable because it bore no nexus to the charged offense, and unconstitutionally overbroad because it is "not narrowly tailored to Mr. Williams'[s] case and history . . . ."

After noting that "[t]his is a stipulated probation case with a[] 180-day agreement," the court granted Williams formal probation for three years, subject to serving 180 days in local custody. The court explained it was "leaving the [electronics-search condition] intact" due to Williams's extensive and violent criminal history, prior failure to comply with probation conditions, and admitted daily marijuana use. The court reasoned "Probation is going to need" the electronics-search condition to ensure that Williams does not use an electronic device to procure drugs or weapons, or to "post pictures of himself using [a] weapon."

After identifying the probation conditions it intended to impose, the trial court asked, "Mr. Williams, do you accept probation on those terms and conditions?" Williams responded, "Yes."

The month after he was sentenced, Williams filed this appeal. The appellate record does not contain a probable cause certificate.

---

4 The words that we italicized were handwritten in a blank on the proposed order.

DISCUSSION

I. *Dismissal Based on Appellate Waiver/Lack of Probable Cause Certificate*

The Attorney General maintains this appeal should be dismissed because Williams waived his right to appeal and failed to obtain a probable cause certificate. We agree.

A. *Legal Principles*

As relevant here, two principles limit the appellate rights of a criminal defendant who has pleaded guilty. First, under section 1237.5, a defendant cannot appeal from a judgment of conviction following a guilty plea unless the defendant first applies for and obtains a probable cause certificate indicating there are "reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings." (§ 1237.5, subds. (a)-(b).)[5] " 'The purpose of section 1237.5 is . . . "to discourage and weed out frivolous or vexatious appeals challenging convictions following guilty and nolo contendere pleas," ' " and the " 'requirements of section 1237.5 . . . must be strictly applied.' " (*People v. Mashburn* (2013) 222 Cal.App.4th 937, 941 (*Mashburn*).)

The California Rules of Court establish an exception to the probable cause certificate requirement if the defendant's appeal is based on "[g]rounds that arose after

---

5 Section 1237.5 states: "No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court."

entry of the plea and do not affect the plea's validity." (Cal. Rules. of Court, rule 8.304(b)(4)(B); all further rule references are to the Cal. Rules of Court.) " 'In determining whether section 1237.5 applies to a challenge of a sentence imposed after a plea of guilty or no contest, courts must look to the substance of the appeal: "the crucial issue is *what* the defendant is challenging, not the *time or manner* in which the challenge is made." ' " (*People v. Buttram* (2003) 30 Cal.4th 773, 781, italics added (*Buttram*).) "Hence, the critical inquiry is whether a challenge to the sentence is *in substance* a challenge to the validity of the plea, thus rendering the appeal subject to the requirements of section 1237.5." (*Ibid*.)

The second limiting principle is a criminal defendant's waiver of the right to appeal. "A defendant may waive the right to appeal as part of a plea bargain where the waiver is knowing, intelligent and voluntary." (*People v. Mumm* (2002) 98 Cal.App.4th 812, 815; see *People v. Panizzon* (1996) 13 Cal.4th 68, 80 (*Panizzon*).) "A broad or general waiver of appeal rights ordinarily includes error occurring before but not after the waiver because the defendant could not knowingly and intelligently waive the right to appeal any unforeseen or unknown future error." (*Mumm*, at p. 815.)

The California Supreme Court addressed these principles in *Panizzon*, *supra*, 13 Cal.4th 68 and *Buttram*, *supra*, 30 Cal.4th 773. The court in *Panizzon* concluded a probable cause certificate was required because the plea agreement included a *specified* sentence; thus, an appeal alleging the sentence was cruel and unusual "affect[ed] the plea's validity" (rule 8.304(b)(4)(B)) and required a probable cause certificate (*Panizzon*, at pp. 85-86). In *Buttram*, however, the court concluded a certificate was not required

because the plea agreement included only a specified *maximum* term. (*Buttram*, at pp. 790-791.) The court reasoned that unlike a specified *term*, a specified *maximum* reserves to the trial court the discretion to determine the appropriate sentence, up to the agreed-upon maximum. (*Id.* at pp. 789-791.) Thus, "[u]nless the agreement itself specifies otherwise"—for example, via a waiver of appellate rights—"appellate issues relating to this reserved discretion are . . . outside the plea bargain and cannot constitute an attack upon its validity." (*Id.* at p. 789.)

Justice Baxter, who wrote the majority opinion in *Buttram*, also wrote a concurring opinion to explain his view that if the guilty plea had also included a waiver of appellate rights, a probable cause certificate would have been required to challenge the discretionary sentence:

> "A prime reason why we conclude here that [the] defendant . . . may take his appeal without a certificate, and that the Court of Appeal must address it on the merits, is that [the] plea *is silent on the appealability* of the trial court's sentencing choice. [¶] Yet it is well settled that a plea bargain may include a waiver of the right to appeal. [¶] . . . [¶]
>
> "[A]n attempt to appeal the sentence notwithstanding the waiver would necessarily be an attack on an express term, and thus on the *validity*, of the plea. [Citation.] A *certificate of probable cause* would therefore be necessary to make the appeal 'operative,' and in the absence of a certificate, the superior court clerk would not be put to the time and expense of preparing a record on appeal. [Citation.] If a record were nonetheless prepared and transmitted, the Court of Appeal could still dismiss the appeal for lack of a certificate, without having to address its merits.
>
> "An attempt to appeal the *enforceability* of the *appellate waiver itself* (for example, on grounds that it was not knowing, voluntary, and intelligent, or had been induced by counsel's ineffective assistance) would not succeed in circumventing the *certificate*

> requirement. This is because, however important and meritorious such a challenge might be, it too would manifestly constitute an *attack on the plea's validity*, thus requiring a certificate in any event." (*Buttram, supra*, 30 Cal.4th at pp. 791-793 (conc. opn. of Baxter, J.).)

In *People v. Espinoza* (2018) 22 Cal.App.5th 794 (*Espinoza*), our colleagues in the First District, Division One analyzed *Panizzon* and *Buttram* and concluded that a defendant whose guilty plea included a broad waiver of appellate rights was required to obtain a probable cause certificate before appealing the reasonableness of a subsequently imposed probation condition. (*Espinoza*, at pp. 797-798, 802-803.)[6] The court rejected the defendant's argument that she could not have knowingly and voluntarily waived at the change of plea hearing her right to appeal a probation condition the court *subsequently imposed* at the sentencing hearing. (*Id.* at p. 802.) Despite this sequence of events, the court reasoned a certificate was nonetheless required because a challenge to the knowingness and voluntariness of an appellate waiver included in a guilty plea "still challenges 'the validity of the waiver . . . and, thus, the plea itself.' " (*Id.* at p. 802, quoting *Mashburn, supra*, 222 Cal.App.4th at p. 943.)[7] The *Espinoza* court concluded:

---

6 The appellate waiver in *Espinoza* provided: " 'Even though I will be convicted in this case as a result of my plea, I have the right to appeal the judgment and rulings of the court [citation]. **I give up my right of appeal.**' " (*Espinoza, supra*, 22 Cal.App.5th at p. 797.)

7 The *Mashburn* court concluded that under *Panizzon* and *Buttram* (both Justice Baxter's majority and concurring opinions), the defendant was required to obtain a probable cause certificate before challenging the trial court's ruling on a suppression motion where the plea agreement included a waiver of appellate rights substantially similar to the one in *Espinoza*. (*Mashburn, supra*, 222 Cal.App.4th at pp. 940, 942-943.)

> "In summary, we hold that when a defendant waives the right to appeal as part of a plea agreement, and the waiver's terms encompass the issue the defendant wishes to raise, the defendant must obtain a certificate of probable cause to avoid dismissal of the appeal." (*Espinoza*, *supra*, 22 Cal.App.5th at p. 803.)

B. *Analysis*

Applying the reasoning of *Espinoza*, *supra*, 22 Cal.App.5th 794, we conclude Williams's challenge to the electronics-search condition falls within the scope of his waiver of appellate rights such that he was required to obtain a probable cause certificate before filing this appeal. Because he failed to do so, we dismiss the appeal.

Williams acknowledges his guilty plea included a stipulated probationary sentence and that he "understood that if he was granted probation the trial court may impose reasonable conditions of probation." However, despite his waiver of the right to do so, Williams in this appeal challenges an aspect of his stipulated probationary sentence. Consequently, he was required to obtain a probable cause certificate.

Williams maintains "[h]e did not waive his right to challenge unreasonable or unconstitutional conditions that were proposed *after* he entered into the plea." But the *Espinoza* court rejected precisely this argument. (See *Espinoza*, *supra*, 22 Cal.App.5th at page 802; *Mashburn*, *supra*, 222 Cal.App.4th at p. 943.) Williams does not address *Espinoza* in his briefing on appeal, despite the fact the opinion was filed about three months before his opening brief, and about six months before his reply brief.

Instead, Williams cites *People v. Vargas* (1993) 13 Cal.App.4th 1653 to support the general proposition that a defendant cannot "knowingly waive the right to appeal unforeseen errors" committed in subsequent sentencing proceedings. However, as the

Espinoza court noted, the *Vargas* court reached its conclusion "without considering whether a certificate of probable cause was required to enable the defendant to argue that the waiver was unenforceable" on grounds "it was not knowing and intelligent." (*Espinoza*, *supra*, 22 Cal.App.5th at p. 802.) Absent such an analysis, *Vargas* is of limited value here.

Finally, although the scope of the waiver in *Espinoza*—"I give up my right of appeal" (*Espinoza*, *supra*, 22 Cal.App.5th at p. 797, bolding omitted)—was broader than the one here—"I give up my right to appeal . . . any sentence stipulated herein"—Williams's appeal relates directly to the subject matter of his limited waiver. Thus, he was required to obtain a probable cause certificate before pursuing this appeal.

Accordingly, we dismiss the appeal.

II. *Electronics-search Condition*

Even if we were to reach the merits of Williams's appeal, we would find them lacking. Williams contends the electronics-search condition is unreasonable under *Lent*, *supra*, 15 Cal.3d 481, and constitutionally overbroad under *Riley*, *supra*, __ U.S. __ [134 S.Ct. 2473]. Similar issues are currently pending before the California Supreme Court in *In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted February 17, 2016, S230923, and many other cases, including this court's decisions in *People v. Trujillo* (2017) 15 Cal.App.5th 574 (*Trujillo*), review granted November 29, 2017, S244650, and *People v. Nachbar* (2016) 3 Cal.App.5th 1122 (*Nachbar*), review granted December 14, 2016, S238210. Based on the persuasive value of this court's prior decisions (rule 8.1115(e)), we would reject Williams's appeal on the merits.

A. *Reasonableness Under* Lent

1. *Legal Principles*

Probation is not a right, but an act of leniency allowing a defendant to avoid imprisonment. (*People v. Moran* (2016) 1 Cal.5th 398, 402.) When imposing probation, "courts have broad discretion to impose [probation] conditions to foster rehabilitation and to protect public safety . . . ." (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120 (*Carbajal*).)

But this broad discretion "is not without limits." (*Carbajal*, *supra*, 10 Cal.4th at p. 1121.) A probation condition "must serve a purpose specified in the statute," and conditions regulating noncriminal conduct must be " 'reasonably related to the crime of which the defendant was convicted or to future criminality.' " (*Ibid.*) In *Lent*, the California Supreme Court held a probation condition is "invalid" under this standard *only* if the condition " '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .' " (*Lent*, *supra*, 15 Cal.3d at p. 486.) "This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term." (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*).) We apply an abuse-of-discretion standard in reviewing the trial court's application of this test. (*Ibid.*)

2. *Analysis*

The Attorney General attempts to justify the electronics-search condition solely on the basis of the third *Lent* prong—that the condition is " 'reasonably related to future

criminality . . . .' " (*Lent, supra*, 15 Cal.3d at p. 486.) In *Trujillo, supra*, 15 Cal.App.5th at page 583, this court upheld the use of the same probation condition under the third *Lent* prong, based on the following framework:

> "After *Lent*, the California Supreme Court clarified that a probation condition 'that enables a probation officer to supervise his or her charges effectively *is* . . . "reasonably related to future criminality." ' (*Olguin, supra*, 45 Cal.4th at pp. 380-381, italics added; accord, *In re P.O.* (2016) 246 Cal.App.4th 288, 295 . . . (*P.O.*).) Because the probation officer is responsible for ensuring the probationer refrains from criminal activity and obeys all laws during the probationary period, the court may appropriately impose conditions intended to aid the probation officer in supervising the probationer and promoting his or her rehabilitation. (*Olguin*, at pp. 380-381; *People v. Balestra* (1999) 76 Cal.App.4th 57, 67 . . . (*Balestra*) ['a warrantless search condition is intended to ensure that the [probationer] is obeying the fundamental condition of all grants of probation, that is, the usual requirement . . . that a probationer "obey all laws" '].) 'This is true "even if [the] condition . . . has no relationship to the crime of which a defendant was convicted." ' " (*P.O.*, at p. 295, quoting *Olguin*, at p. 380.)" (*Trujillo, supra*, 15 Cal.App.5th at p. 583.)

Applying this framework, we conclude the factual record supports the finding that the electronics-search condition is reasonably related to preventing Williams's future criminality. He has an extensive history of violent criminal offenses—including against authority figures (e.g., school officials, law enforcement, and emergency personnel)—and his current conviction stems from his illegal carrying of a concealed weapon. The record also shows Williams has substantial risk factors relevant to reoffending, including admitted daily drug use, repeated failures while previously on parole, and the factors identified in the probation report ("Criminal Opportunity," "Residential Instability," and "Vocational/Education[al]"). The court imposed the electronics-search condition with the

awareness of these facts and the probation department's conclusion that Williams "would benefit from some guidance and monitoring in the community via supervision by Probation" to mitigate the "issues which make him a risk for community safety."

The trial court acted within its discretion in imposing the electronics-search condition. Because a defendant's email and Internet use can provide important insight into his daily activities, the court had a reasonable basis to permit warrantless searches of Williams's electronics to provide the necessary supervision to ensure he abides by the law and his other probation conditions. Although the probation department could also supervise Williams through face-to-face meetings, telephone conversations, and physical searches, the court could fairly conclude random electronic searches would provide an additional highly effective tool to deter Williams from reoffending and ensure he remained law abiding. (See *Trujillo, supra,* 15 Cal.App.5th at pp. 582-584; *In re P.O.* (2016) 246 Cal.App.4th 288, 295 (*P.O.*); see also *Olguin, supra,* 45 Cal.4th at p. 382.) These considerations are particularly relevant here, where Williams has a demonstrated history of failing to comply with parole conditions and authority figures, and where his residential instability may render unannounced in-person searches impracticable. Thus, the electronics-search condition bears a sufficient nexus to the circumstances of Williams's case.

We are aware Courts of Appeal have offered differing views about electronics-search conditions of probation. However, we think our opinion in *Trujillo* establishes an appropriate balance of the probationer's privacy interests and the need for adequate supervision of probationers such as Williams. Pending further direction from our

Supreme Court, we will adhere to the views expressed in *Trujillo*. As in that case, we find no abuse of discretion in the trial court's imposition of the electronics-search condition under the third *Lent* prong.

B. *Constitutional Overbreadth Challenge*

Williams alternatively contends the electronics-search condition is unconstitutionally overbroad because it "could potentially expose a large volume of documents or data, much of which may have nothing to do with illegal activity." We are not persuaded.

" 'A probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.' [Citation.] 'The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.' " (*People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346; accord, *In re Sheena K.* (2007) 40 Cal.4th 875, 890.)

To show the electronics-search condition is overbroad, Williams relies on *Riley, supra,* __ U.S. __ [134 S.Ct. 2473]. In *Riley*, the United States Supreme Court rejected the government's argument that law enforcement may, without a warrant, search a cell phone seized from an arrested individual. The court discussed the fact that a modern cell phone can hold an immense amount of confidential information, including past and current medical records, past and current financial records, Internet searches involving

highly personal issues, personal diaries, photographs, and intimate correspondence. (*Id.* at pp. 2489-2491.) The court balanced the strong privacy intrusion arising from a search of this type of information against the law enforcement justifications for dispensing with the warrant requirement, and found the arrestee's privacy concerns outweighed the law enforcement justifications. (*Id.* at pp. 2485-2493.) But the court made clear it was not holding that "a cell phone is immune from search" (*id.* at p. 2493), and recognized its ruling would not necessarily extend to other situations in which law enforcement needs are stronger. (*Id.* at pp. 2493-2494.)

Relying on *Riley*, the Court of Appeal in *People v. Appleton* (2016) 245 Cal.App.4th 717 concluded an electronics-search probation condition was constitutionally overbroad because it would allow the search of "vast amounts of personal information unrelated to defendant's criminal conduct or his potential for future criminality" (*id.* at p. 727), and remanded for the trial court to fashion a more narrowly tailored electronics-search condition (*id.* at pp. 724-727; accord, *P.O., supra,* 246 Cal.App.4th at pp. 297-298).

In two recent decisions, this court found *Appleton*'s analysis unpersuasive on the specific facts of those cases. (See *Trujillo, supra,* 15 Cal.App.5th at pp. 587-589; *Nachbar, supra,* 3 Cal.App.5th at pp. 1128-1130.) We explained that although *Riley*'s description of the general privacy concerns pertaining to cell phones informed our decisionmaking, *Riley's* ultimate conclusion regarding the need for a warrant does not necessarily apply in the probation-condition context without specific facts showing a heightened privacy interest. (*Trujillo*, at pp. 587-589; *Nachbar*, at p. 1129; accord *In re*

J.E. (2016) 1 Cal.App.5th 795, 803-807, review granted Oct. 12, 2016, S236628.) We emphasized a probationer's reduced privacy rights (as compared to an arrestee's rights); the existence of facts showing the need for intensive supervision; the absence of any evidence showing the probationer's electronics contained the type of sensitive information identified in *Riley;* and the fact that neither defendant established that the electronic searches would be materially different from a search of their homes and/or challenged the Fourth Amendment waiver as to their residences. (*Trujillo,* at pp. 586-589; *Nachbar,* at pp. 1128-1129.) While *Nachbar* and *Trujillo* remain pending before the California Supreme Court, we continue to find their reasoning persuasive, absent a contrary direction from the high court. (See rule 8.1115(e).)

The record here does not contain the necessary particularized information supporting the need for a more narrowly tailored electronics-search condition. That is, although Williams filed a 10-page objection to the condition in the trial court, he provided no evidence showing that he owns any devices or accounts that would be subject to the search condition, let alone that they hold the type of sensitive medical, financial, or personal information described in *Riley* and *Appleton.*

The record is also devoid of evidence showing that a search of Williams's electronics would be any more invasive than an unannounced, without-cause, warrantless search of his residence (or his girlfriend's car), a highly-intrusive condition he has not challenged on appeal. As in *Trujillo*, there is nothing in the record showing there would be any particular information on Williams's electronics that requires protection from the government because it is more private than items in his residence.

Any concerns regarding the potential invasiveness of the electronics-search condition in this case would be ameliorated by the restriction against arbitrary, capricious, or harassing probation searches. (See *People v. Woods* (1999) 21 Cal.4th 668, 682; *People v. Cervantes* (2002) 103 Cal.App.4th 1404, 1408.) Further, if Williams adds information to his electronic devices that would invoke stronger privacy protections beyond a warrantless search of his home and would be unrelated to his criminality or future criminality, he would have the right to seek to modify the probation condition to protect the privacy of this information. (See § 1203.2, subd. (b); *Olguin, supra*, 45 Cal.4th at p. 379.)

DISPOSITION

The appeal is dismissed.

HALLER, J.

I CONCUR:

BENKE, Acting P. J.

I CONCUR IN THE RESULT:

IRION, J.